



**GENERAL PROVISIONS FOR FIXED PRICE CONSTRUCTION SUBCONTRACTS  
NATIONAL IGNITION FACILITY PROJECT**

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**CLAUSE 1 – CHANGE ORDER ADJUSTMENTS**

All estimated costs used for change order price adjustments at any tier shall be consistent with the contract cost principles and procedures for construction contracts in Part 31 of the Federal Acquisition Regulation (48 CFR Part 31), as supplemented or modified by the Department of Energy Acquisition Regulation Part 931 (48 CFR Part 931) in effect as of the date of signature-execution of this Subcontract.

**CLAUSE 2 – PERFORMANCE AND PAYMENT BONDS**

A. Upon the execution of this Subcontract the Subcontractor shall furnish to the University the following bonds:

1. A Performance Bond, guaranteeing the faithful performance of this Subcontract, and
2. A Payment Bond, guaranteeing the payment of claims of mechanics, material men, and others.

Said bonds shall be in the forms hereto attached and with sureties approved by the University. The premiums upon all such bonds shall be paid by the Subcontractor.

B. The penal amount of the Performance Bond shall be 100 percent of the Subcontract price. The penal amount of the Payment Bond shall be, as follows:

1. When the Subcontract price is not more than \$1,000,000, the penal amount shall be 50 percent of the Subcontract price;
2. When the Subcontract price is more than \$1,000,000 but not more than \$5,000,000, the penal amount shall be 40 percent of the Subcontract price; and
3. When the Subcontract price is more than \$5,000,000, the penal amount shall be \$2,500,000.

C. The University shall approve any surety company which, at the time of execution of this Subcontract, is listed in the latest published U.S. Treasury Department list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies."

D. The Subcontractor shall promptly furnish additional security as may be required from time to time to protect the interest of the University and the U.S. Government and of persons supplying labor or materials under this Subcontract, if:

1. Any surety upon any bond furnished in connection with this Subcontract becomes unacceptable to the University;
2. Any such surety fails to furnish reports as to its financial condition as required from time to time by the University; or
3. The Subcontract price is increased to such an extent that the penal sum of the existing bonds becomes inadequate, in the opinion of the University.

**CLAUSE 3 – LIENS AND CLAIMS FOR LABOR OR MATERIALS**

A. The Subcontractor agrees that at any time upon request of the University it will submit a sworn statement setting forth the work performed or material furnished by the subcontractors, suppliers and material men, and the amount due to become due to each, and that before final payment called for hereunder, the Subcontractor will, if requested, submit to University a complete set of vouchers showing what payments have been made for material and labor used in connection with the work called for hereunder.

- B. The Subcontractor shall promptly notify the University in writing of any claims, demands, causes of action, or suits arising out of or related to the furnishing of material or labor in connection with the work under this Subcontract brought to its attention. The Subcontractor shall forward with notification copies of all pertinent papers received by the Subcontractor with respect to any such claims, demands, causes of action, or suits, and, at the request of the University, shall do all things and execute and deliver all appropriate documents and assignments in favor of the University or the U.S. Government of all the Subcontractor's rights and claims growing out of such asserted claims, as will enable the University and the U.S. Government to protect their respective interests by litigation or otherwise.
- C. Neither the final payment nor any part of the retained percentage shall become due until the Subcontractor, if required, delivers to the University a complete release of all liens arising out of this Subcontract, or receipts in full in lieu thereof, as the University may require, and, if required in either case, an affidavit that as far as it has knowledge or information, the releases and receipts include all the labor and material for which a lien could be filed; but the Subcontractor may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the University to indemnify it against any claim by lien or otherwise. If any lien or claim remains unsatisfied after all payments are made, the Subcontractor shall refund to the University all amounts that the latter may be compelled to pay in discharging such lien or claim, including all costs and reasonable attorney's fees.
- D. Any subcontractor, material man, or workman, or anyone else having any claim against the Subcontractor for or on account of work done or material furnished for the performance of the work provided for here under, may give written notice of said claim and the amount thereof to the University, who may, but shall not be obliged to, thereupon withhold from payments due or to become due thereafter to the Subcontractor an amount equal to such claims until such claims are adjusted and paid. The provisions of this clause shall not lessen or diminish but shall be in addition to the right or duty of the University to withhold any payments under the provisions of the laws of the State of California respecting the withholding of sums due to the Subcontractor.

#### **CLAUSE 4 – INDEMNIFICATION**

The Subcontractor shall defend, indemnify, and hold harmless the University and the U.S. Government, their officers, employees, and agents from and against all losses and expenses (including costs of attorney's fees), damages, and law imposed liabilities resulting from or arising out of this Subcontract and/or the Subcontractor's performance hereunder (including but not limited to those on account of any injury to or death of any person or damage to or loss of any property), excepting only those losses, expenses, damages and law imposed liabilities caused solely by the intentional misconduct or active negligence of University or U.S. Government personnel.

#### **CLAUSE 5 - OWNER CONTROLLED INSURANCE PROGRAM (OCIP)**

- A. University Provided Insurance - Prior to commencement of the Work, University shall secure and thereafter, except as otherwise provided herein, maintain at all times during the performance of this Subcontract the insurance specified in A.1, A.2, A.3 and A.4 below, with University and subcontractors of all tiers and such other persons or interests as the University may designate as insured parties with limits not less than those specified below for each coverage.

University provided insurance shall not apply to vendors, suppliers, off-site fabricators, material dealers, and others who merely transport, pick up, deliver or carry materials, personnel, parts or equipment or any other items or persons to or from the Project Site, including any employee(s) of an enrolled Subcontractor and its lower tiered subcontractors that does not work and/or generate payroll at the project site(s). Refer to the insurance policy for more specific inclusions and/or exclusions.

Unless herein otherwise specifically indicated, the policies set forth in A.1, A.2, A.3 and A.4 below shall cover only those operations of the insured parties performed at the Project Site in connection with the Work. A brief description of the policies follows. Refer to the actual policy for specific coverages.

1. Workers' Compensation Insurance in Statutory Limits of the Workers' Compensation Laws of the State of California including coverage for the benefits provided under United States Longshoremen and Harbor Workers' Act, with Coverage B - Employer's Liability (with limits of \$1,000,000 each accident for Bodily Injury by accident, \$1,000,000 each employee for Bodily Injury by disease and \$1,000,000 policy limit Bodily Injury by disease), covering operations of University and subcontractors of all tiers performed in connection with the Work at the Project Site.
2. Primary Liability Insurance (Excluding Automobile and Professional Liability) in form providing coverage not less than a Commercial General Liability insurance policy, including hazards of operations (including explosion, collapse and underground coverage), sudden and accidental pollution, elevators, independent contractors, employees as additional insureds, completed operations for five years after Substantial Completion of the Work, contractual liability coverage and personal injury liability coverage for claims arising out of the Work hereunder for personal injury, bodily injury and property damage in policy or policies of insurance such that the total

available limits to all insured combined will not be less than \$2,000,000 per occurrence, \$4,000,000 general aggregate and \$4,000,000 completed operations aggregate.

Notwithstanding the actual policy deductible, the Subcontractor shall be liable for a deductible not to exceed \$10,000 for each occurrence, to the extent losses payable are attributable to its acts or omissions or the acts or omissions of its lower tiered subcontractors, uninsured parties, or any other entity or person for whom it may be responsible. The Subcontractor deductible applies to occurrence related clean up, repair, replacement, settlement, judgment, attorneys' fee and court costs incurred by the University or the OCIP carrier.

This insurance will not extend coverage for products liability to any insured party, vendor, supplier, material dealer or others for any product manufactured, assembled or otherwise worked upon away from the Project Site. However, Products/Completed Operations liability arising from manufacturing or assembly of items manufactured or assembled at the Project Site as required by the Subcontract is covered.

3. Excess Liability Insurance, subject to its own terms and conditions, in limits of \$100,000,000 per occurrence and annual aggregate excess of the insurance provided in A.1 (Coverage B only) and A.2 above.
4. Builder's Risk including Transit insuring the interest of Department of Energy (DOE), the University and subcontractors of all tiers, providing coverage on an "All Risk" basis, including coverage against fire, lightning, wind damage, hail, explosion, riot or civil commotion, aircraft, other vehicles, and collapse. Such insurance will be on a completed value basis and valuation will be on a replacement cost basis.

Coverage will include all materials, supplies, and equipment that are intended for specific installation in the project while such materials, suppliers and equipment are located at the Project Site, in transit and while temporarily located away from the Project Site for the purpose of repair, adjustment or storage at the risk of one of the insured parties.

The Builder's Risk policy will provide a limit based on the estimated total project value, with a sublimit of \$1,000,000 applicable to transit and storage away from the project site; \$500,000 expediting expense; \$25,000 valuable papers; \$5,000,000 demolition and/or increased cost of construction; and \$10,000,000 debris removal.

This insurance will not include any tools or clothing of workers or any tools, equipment, protective fencing, temporary structures, and equipment owned, rented, leased or used by the subcontractors of any tier and used in the performance of the Work. The University shall not be liable or responsible for any loss or damage to such items excluded from the builder's risk coverage.

The Builder's Risk policy will be endorsed (a) waiving the carrier's rights of recovery under subrogation against all parties whose interest is insured under such policy; and (b) so as to provide that the insurance company will not cancel such insurance without giving 60 days prior notice to University.

Any loss insured under paragraph A.4 is to be adjusted with the University and made payable to the University for the interest of all parties.

The Subcontractor and its lower tiered subcontractors shall be liable for a deductible not to exceed \$25,000 for each occurrence for all insured perils.

NOTE: The Subcontractor shall not be responsible for the cost of repairing or restoring damage to the Work, which damage is determined to have been proximately caused by an earthquake or flood, provided, that the Work damaged was built in accordance with the plans, specifications and standards applicable to the Subcontract.

- B. Alternative Insurance - In the event the University for any reason is unable to furnish or after commencement of work elects not to furnish or to continue to furnish the insurance as specified in A.1, A.2, A.3 and A.4 and upon 30 days written notice from University, the Subcontractor shall secure at University's cost and thereafter during the performance of this Subcontract maintain such insurance as may be required by the University and shall cause all subcontractors of any tier to do likewise.
- C. Subcontractor and Lower Tier subcontractor Provided Insurance - Subcontractor shall at all times during the period in which this Subcontract is in force and effect provide and maintain insurance and shall require all its subcontractors of any tier to provide and maintain insurance of the type and in limits as set forth below. Such insurance shall name the parties required to secure same as insureds and shall be in form and by issuing companies acceptable to the University.

The insurance may be provided in policy or policies, primary and excess, including the umbrella or catastrophe form which may include the coverage, or layer thereof, of the insurance required by the University. The limits of liability shall be as stated below, unless, prior to commencement of any work, written approval is granted by University for variance from those limits.

1. Automobile Liability Insurance covering all owned, non-owned and hired automobiles, trucks and trailers of the respective parties required to provide and maintain this insurance. Such insurance shall provide coverage not less than that of the Standard Comprehensive Automobile Liability policy in limits not less than, as respects Subcontractor, \$1,000,000 Combined Single Limit each occurrence for Bodily Injury and Property Damage, and as respects all tiers of its subcontractors \$1,000,000 Combined Single Limit each occurrence for Bodily Injury and Property Damage. Contractual Liability, if not provided in the policy form, is to be provided by endorsement.
2. Workers' Compensation for operations AWAY FROM THE PROJECT SITE in Statutory limits of the Workers' Compensation Laws of the State of California with Coverage B - Employers Liability Limits of not less than \$1,000,000 each accident for Bodily Injury, \$1,000,000 Policy Limit for Bodily Injury by disease and \$1,000,000 each employee for Bodily Injury by disease covering operations of the party required to furnish same.
3. Aviation and/or Marine. Should aircraft or water craft of any kind be used by Subcontractor, any tier of its subcontractors or by anyone else on their behalf, Subcontractor or its subcontractor shall maintain or cause the operator of the aircraft/water craft to maintain aircraft/water craft public liability insurance including bodily injury, property damage and passenger liability, as respects any aircraft/water craft owned, used, operated or hired in connection with the Work by the Subcontractor, subcontractor or anyone else in limits of \$25,000,000 combined single limit for bodily injury and property damage any one occurrence, each aircraft/water craft.
4. General Liability insurance for operations AWAY FROM THE PROJECT SITE of the Subcontractor or any tier of its subcontractors (including products liability for any product manufactured, assembled or otherwise worked upon away from the Project Site) in a form providing coverage not less than that of standard Commercial General Liability insurance policy ("Occurrence Form") for operations of the party required to furnish same, including hazards of operations (including explosion, collapse and underground coverage), elevators, independent contractors, products and completed operations, with contractual liability and personal injury liability coverage for claims arising out of the Work hereunder for personal injury, bodily injury and property damage in policy or policies of insurance such that the total available limits combined shall not be less than the following limits, based on the indicated subcontract amounts:

For any subcontract of any tier in excess of \$20,000,000:

- (i) \$11,000,000 per occurrence, \$12,000,000 general aggregate limit and \$12,000,000 aggregate products and completed operations

For any subcontract of any tier within \$10,000,000 and \$19,999,999:

- (ii) \$8,500,000 per occurrence, \$9,500,000 general aggregate limit and \$9,500,000 aggregate products and completed operations

For any subcontract of any tier within \$5,000,000 and \$9,999,999:

- (iii) \$6,000,000 per occurrence, \$7,000,000 general aggregate limit and \$7,000,000 aggregate products and completed operations

For any subcontract of any tier within \$1,000,000 and \$4,999,999:

- (iv) \$4,000,000 per occurrence, \$5,000,000 general aggregate limit and \$5,000,000 aggregate products and completed operations

For any subcontract of any tier within \$50,000 and \$999,999:

- (v) \$2,000,000 per occurrence, \$3,000,000 general aggregate limit and \$3,000,000 aggregate products and completed operations

For any subcontract of any tier \$50,000 or less:

- (vi) \$1,500,000 per occurrence, \$2,500,000 general aggregate limit and \$2,500,000 aggregate products and completed operations

- D. Subcontractor and Lower Tier subcontractor Obligations - Subcontractor and its lower tier subcontractors shall not violate or knowingly permit to be violated any conditions of the policies of insurance provided by the University under the terms of this Subcontract and shall at all times satisfy the requirements of the insurance companies issuing them.

For insurance purposes, Subcontractor agrees and will require each of its subcontractors of any tier to agree to keep and maintain an accurate and classified record of its payroll, to furnish to the University's representative and to the insurance company or companies full and accurate payroll data and information in accordance with the requirements

of the insurance company or companies, and to permit its books and records to be examined and audited periodically by the insurance company or companies or the University and their respective representatives.

Prior to the respective parties' commencement of operations at the Project Site, Subcontractor shall furnish and cause each of its subcontractors of any tier to furnish to the University or its designee, in a form satisfactory to the University, an estimate of labor cost (listed by Standard Worker's Compensation Insurance classification) to be incurred in connection with the Work at the Project Site by each such subcontractors, other insurance related information that the University or the insurer may need to effect and maintain the University provided coverages and the total price due each such subcontractor under its subcontract.

Each insurance policy to be maintained under subparagraphs C.1, C.3, and C.4 by Subcontractor or its subcontractors of all tiers shall be endorsed:

1. To name as Additional Insured the University and the DOE, their directors, officers, agents, consultants, servants and employees and all other interests as may be reasonably required by the University as Additional Insureds. The coverage afforded the Additional Insured under these policies shall be primary insurance. If the Additional Insured has other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis and shall not reduce the amount of insurance available from the policies provided by Subcontractor or its subcontractors of any tier.
  2. That in the event of any claims being made by reason of Bodily Injury, Personal Injury, or Property Damage sustained by any agent, servant or employee of one insured for which another insured is or may be liable, then the policy, to the maximum extent consistent with aggregate or per occurrence or combined limits of insurance, shall cover such insured against whom a claim is made in the same manner as if a separate policy with separate limits had been issued to each insured.
- E. Notices, Costs, Losses - All policies of insurance that either Subcontractor(s) or its subcontractors are required under the terms of this Subcontract to secure and maintain shall be endorsed to provide that the insurance company shall provide written notice to the University at least 60 days prior to the effective date of any cancellation or adverse material change of such policies.

Prior to the date on which Subcontractor or any of its subcontractors regardless of tier commences operations at the Project Site, Subcontractor shall cause to be furnished to the University certificates of insurance maintained by Subcontractor and each such subcontractor in connection with the operations at the Project Site. As and when the University may direct, copies of the actual insurance policies or renewals or replacements thereof shall be submitted to the University. All copies of policies, if any, and certificates of insurance submitted to the University shall be in form and content acceptable to the University.

- F. Subrogation and Waiver - Subcontractor shall require all policies of insurance that are in any way related to the Work and that are secured and maintained by Subcontractor and all tiers of its subcontractors to include clauses providing that each insurer shall waive all of its rights of recovery, under subrogation or otherwise, against the University, The Department of Energy, separate Subcontractors, Subcontractor and all tiers of subcontractors (including all tiers of subcontractors of separate Subcontractors).

Subcontractor waives, and shall require all tiers of its subcontractors to waive, all rights of recovery against the University, Department of Energy, separate Subcontractors and all subcontractors regardless of tier (including all tiers of subcontractors of separate Subcontractors) which Subcontractor may have or acquire because of deductible clauses in or inadequacy of limits of any policies of insurance that are in any way related to the Work and that are secured and maintained by Subcontractor.

- G. Coverage - The coverages referred to in subparagraph A - University Provided Insurance above are set forth in full in the respective policy forms, and the foregoing descriptions of such policies are not intended to be complete, or to alter or amend any provision of the actual policies and in matters, if any, in which the said description may be conflicting with such instruments, the provisions of the policies of insurance shall govern. Copies of the actual policies will be available for review in the office of the Construction Manager at the Project Site.

H. Miscellaneous

1. Any type of insurance or increase of limits not described above which the Subcontractor requires for its own protection or on account of statute shall be its own responsibility and at its own expense. The Subcontractor warrants such expense will not be included, directly or indirectly in any change to this Subcontract.
2. All insurance underwriting, payroll, rating or loss history information requested of the Subcontractor and subcontractors of all tiers by the University or the University's OCIP Administrator must be provided within five working days of the request. At all times during the performance of the Work, the Subcontractor and Subcontractors of all tiers shall cooperate with the University's OCIP Administrator and OCIP insurers. After

each Subcontractor and its subcontractors are properly enrolled in the OCIP, the OCIP Administrator will issue or have issued to the Subcontractor and subcontractors of all tiers prior to their commencing Work on the Project Site, Certificates of Insurance evidencing the coverages arranged by the University.

3. The insurance premiums for the OCIP will be paid by the University. To evaluate OCIP effectiveness, the University will need estimates of what the Subcontractor and its subcontractors otherwise would have spent for insurance covered by the OCIP. The Subcontractor and its subcontractors shall make available to the University and the OCIP Administrator policy data, Insurance Cost Worksheets, and backup calculations of these estimates within 60 calendar days of Notice to Proceed. The Subcontractor and its subcontractors represent that the information used to calculate the insurance costs is accurate and agree that the University, the OCIP Administrator, and/or the OCIP insurer may audit the Subcontractor's and its subcontractors' records and other insurance agreements to confirm the accuracy of the information.
4. An OCIP Procedures Manual ("Manual") will be sent to the Subcontractor and all lower tier subcontractors. The Manual will contain administrative, loss prevention and claim reporting procedures and requirements. These reporting requirements include: a) OCIP enrollment forms; b) a certificate of insurance evidencing insurance coverages as outlined in C. above; c) a one page cumulative monthly safety experience summary; and d) immediate claim reporting procedures. Subcontractor agrees to cooperate with the OCIP Administrator in providing all the information and reporting as required in the Manual, and will require that its subcontractors provide equal cooperation.

#### **CLAUSE 6 – PERMITS AND RESPONSIBILITIES**

The Subcontractor shall, without additional expense to the University, be responsible for obtaining any necessary licenses and permits if the work required by this Subcontract is performed off Federal property. The Subcontractor is further responsible for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work.

#### **CLAUSE 7 – BUY AMERICAN ACT REQUIREMENTS**

- A. The *BUY AMERICAN ACT-BALANCE OF PAYMENTS PROGRAM-CONSTRUCTION MATERIALS* clause of these GENERAL PROVISIONS requires that only domestic construction material be used in the performance of this Subcontract.
- B. The use of any non-domestic materials under this Subcontract must be approved by the University prior to installation. Unapproved, non-domestic materials delivered to the project site shall be immediately removed from the site by the Subcontractor at the Subcontractor's expense. If non-conforming materials are installed, the Subcontractor shall remove the non-conforming material from the work and replace the material with approved domestic material, at the Subcontractor's expense. If the cost of removal is prohibitive, as determined by the University, and the non-conforming material otherwise meets the requirements of the specifications, the cost of the non-conforming material shall be deducted from the Subcontract amount. The Subcontractor shall not have an option in this matter.

#### **CLAUSE 8 - RESPONSIBILITY FOR TECHNOLOGY EXPORT CONTROL**

- A. The Subcontractor shall comply with all applicable U.S. export control laws and regulations in the performance of this Subcontract and the distribution and use of resulting work products. Generally, U.S. export control laws and regulations apply to any shipment, transmission, transfer, or exposure to any foreign person foreign person, as defined in 22 CFR 120.16, of commodities (equipment, hardware, or material); technology (technical data, information, or assistance); and software (commercial or custom), regardless of where (inside or outside the United States) or how it may occur.
- B. The Subcontractor shall be responsible for obtaining the appropriate licenses or other approvals for exports of commodities, technology, and software, unless an exemption or exception applies. The Subcontractor shall also be responsible for obtaining the appropriate licenses or other approvals before utilizing a foreign person in the performance of this Subcontract, including instances where the work is to be performed at the Lawrence Livermore National Laboratory (LLNL), where the foreign person will have access to any information, technology, or software subject to export control.
- C. The Subcontractor shall be responsible for all regulatory record-keeping requirements associated with the use of licenses and license exemptions and exceptions.
- D. The Subcontractor shall ensure that the provisions of this clause apply to its subcontractors.

#### **CLAUSE 9 - ENVIRONMENTALLY PREFERABLE PRODUCTS AND SERVICES**

- A. The Subcontractor shall utilize environmentally preferable products and services, i.e., products and services that have a lesser or reduced effect on human health and the environment, including those with “recovered material,” as defined in 48 CFR 23.402, to the maximum extent possible without conflicting with the technical requirements of the Subcontract or jeopardizing the intended end use of the items or services to be furnished under this Subcontract.
- B. The Subcontractor shall notify the University Procurement Representative in writing if an “EPA-designated item,” as defined in 48 CFR 23.402, is used in performing this Subcontract that does not contain recovered material or does not contain at least the percentage of recovered material required by any applicable specification of this Subcontract. Such notice shall include a detailed written justification for such failure, on the basis that the item is not available competitively within a reasonable time frame, does not meet appropriate performance standards, or is only available at an unreasonable price.
- C. The Subcontractor shall prepare and submit reports on the use of environmentally preferable products and services and recovered material as the University may require from time to time, in accordance with the written directions of the University Procurement Representative.

#### **CLAUSE 10 - QUALITY OF MATERIALS AND SUPPLIES**

- A. Any materials or supplies furnished or used by the Subcontractor shall as a minimum: (1) conform to the requirements of this Subcontract and be as warranted; (2) be new and not be of such age or so deteriorated as to impair their usefulness or safety; and (3) not contain any counterfeit/suspect items. The furnishing of reconditioned materials or supplies must be specified in the Subcontract or approved by the University Procurement Representative, and shall be warranted the same as new items.
- B. The University will not accept any work involving the furnishing or use of materials or supplies, found by the University to not meet the minimum requirements of paragraph A, above; to be reconditioned; or to constitute suspect/counterfeit items, notwithstanding any inspection or acceptance of delivery by the University, unless such condition is specifically approved in writing by the University Procurement Representative. The Subcontractor shall promptly replace such items at its expense with conforming items.
- C. The University will impound any suspect/counterfeit items furnished or used under this Subcontract and may provide such items to the Department of Energy (DOE) Office of Inspector General or other appropriate authorities for investigation. The University reserves the right to withhold payment for the suspect/counterfeit items pending the results of any such investigation.
- D. A suspect item is any material, part, or component that visual inspection, testing, or other information indicates may not conform to established Government or industry-accepted specifications or national consensus standards. A counterfeit item is a suspect item that is a copy or substitute made without legal right or authority or whose material, performance, or characteristics are knowingly misrepresented by the Subcontract, supplier, distributor, or manufacturer. Types of known suspect/counterfeit items include, but are not limited to: fasteners, circuit breakers, valves, piping components, electrical devices, plate, bar, shapes, and channel members. Such items may be falsely labeled as a different class of part, or be used or refurbished parts that are falsely represented as new parts.

#### **CLAUSE 11 - FORCED, CONVICT, AND INDENTURED LABOR**

- A. By signing or accepting this Subcontract, the Subcontractor hereby certifies that no foreign-made equipment, materials, or supplies furnished to the University pursuant to this Subcontract will be produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction.
- B. Any subcontractor contracting with the University who knew or should have known that the foreign-made equipment, materials, or supplies furnished to the University were produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction, when entering into a contract or subcontract pursuant to the above, may have any or all of the following sanctions imposed: (1) the contract or subcontract under which the prohibited equipment, materials, or supplies were provided may be voided at the option of the University; or (2) the subcontractor may be removed from consideration for University contracts or subcontracts for a period not to exceed 360 days.

#### **CLAUSE 12 – LIMITATIONS ON SUBCONTRACTING**

(Applicable if the Subcontract is in excess of \$100,000 and results from a Small Business Set-Aside)

By submission of an offer and execution of a Subcontract, the Subcontractor agrees that in performance of the Subcontract in the case of a Subcontract for:

- A. General construction. The Subcontractor will perform at least 15 percent of the cost of the Subcontract, not including the cost of materials, with its own employees.
- B. Construction by special trade contractors. The Subcontractor will perform at least 25 percent of the cost of the Subcontract, not including the cost of materials, with its own employees.

#### **CLAUSE 13 – NON-WAIVER OF DEFAULT**

Any failure by the University at any time, or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of this Subcontract shall not constitute a waiver of such terms or conditions and shall not affect or impair such terms or conditions in any way nor the right of University at any time to avail itself of such remedies as it may have for any breach or breaches of such terms or conditions.

#### **CLAUSE 14 – ASSIGNMENTS**

- A. This Subcontract may be assigned by the University to the U.S. Government or a successor-in-interest.
- B. Except as to assignment of payment due hereunder, the Subcontractor shall have no right, power or authority to sell, mortgage, transfer or assign this Subcontract, any portion hereof, any interest herein, or any claim hereunder, nor allow or permit any other party or parties to have any interest in or use any part of the rights or obligations granted hereunder for any purpose whatsoever without the prior written consent of the University.
- C. Neither this Subcontract nor any interest created thereby or any claim here under shall pass by operation of law or otherwise to any trustee or receiver in bankruptcy or to any other receiver or assignee for the benefit of creditors, or to any other party or parties, except as expressly authorized by the University. The breach of the foregoing prohibition, whether voluntary, or by operation of law, by any process or proceeding of any court or by attachment, execution, proceeding in reorganization, composition, insolvency, or bankruptcy, whether voluntary or involuntary, shall be cause for default under this Subcontract.

#### **CLAUSE 15 - PROJECT NEUTRAL**

##### **A. Introduction**

A Project Neutral (“Neutral”) will be established to assist in the resolution of disputes, claims, and other controversies in connection with, or arising out of performance of the work of this Subcontract. The Neutral will assist in and facilitate the timely and equitable resolution of disputes between the University and the Subcontractor, in an effort to avoid construction delay and litigation. The University shall subcontract with and pay the invoices for the Neutral. In the event a written Request for Review (as described below) is made by either party, the parties shall equally share the cost of the Neutral. Subcontractor agrees that 50 percent of the Project Neutral’s invoice representing its share of the Neutral costs shall be deducted from the Subcontract price by the University’s unilateral modification to the Subcontract.

It is not intended for the University or the Subcontractor to default on their normal responsibility of settling amicably and fairly their differences by indiscriminately referring them to the Neutral. It is intended that this procedure will help the University and Subcontractor to resolve potential disputes without resorting to a formal dispute procedure.

Either the University or the Subcontractor may refer a dispute to the Neutral. Referral to the Neutral should be initiated as soon as it appears that the normal University-Subcontractor dispute resolution effort is not succeeding, and prior to initiating other dispute resolution procedures or filing of litigation by either party.

The Neutral shall impartially and promptly consider disputes referred to it, and shall provide written recommendations to the University and the Subcontractor to assist in the resolution of these disputes.

The findings of the Project Neutral shall be binding on both parties as to subcontract work. If either party is dissatisfied with the findings, either may proceed in accordance with Clause entitled Disputes. However, the project work shall continue as per the decision of the Neutral, and such decision may not be amended without both parties’ consent.

It is understood that the role of the Neutral essentially is to facilitate and/or recommend resolution on matters that are presented to the Neutral. Accordingly, neither the University, the Subcontractor, nor any other involved party shall have a claim against the Neutral arising out of or resulting from, and the Neutral shall not be a necessary party to any judicial proceedings related to, any of the Neutral’s findings, reports, or recommendations.

##### **B. Continuance of Work During Disputes**

At all times during the course of this resolution process, the Subcontractor shall diligently continue with all other work as directed, without delay, conforming to the University’s decision or order, and being governed by all applicable provisions of the Subcontract.



### C. Membership

#### 1. General

The Neutral shall be selected and retained by the University. The Neutral may engage or utilize technical experts of his choice as circumstances dictate for appropriate review of various aspects of the work.

#### 2. Disclosure

The Neutral shall submit a statement to all parties. The statement shall include a résumé of experience, together with a declaration describing all past, present, and anticipated or planned future relationships, including indirect relationships through the prospective member's primary or full-time employer(s), to this project and with all parties involved in the construction subcontract. Disclosure of close, professional, or personal relationships with all key members of all parties to the Subcontract shall be included.

### D. Operation

#### 1. General

The University, Subcontractor and Neutral shall agree upon the operating procedures. It is not desirable to adopt hard and fast rules for the functioning of the Neutral. The entire procedure shall be kept flexible to adapt to changing situations. Neither party shall independently solicit any Neutral's advice or consultation on matters concerning the conduct of the work.

#### 2. Reports to the Neutral

The Neutral will be kept informed of construction activity and other developments by means of regular weekly progress reports, minutes of progress meetings, and other relevant information prepared by the University and the Subcontractor.

#### 3. Regular Visits by the Neutral

The Neutral shall visit the Project Site and meet with representatives of the University and the Subcontractor at regular intervals and at times of critical construction events. The frequency and scheduling of these visits shall be as agreed among the University, the Subcontractor, and the Neutral, depending on the progress of the work. In case of failure to agree, the Neutral shall schedule the visits.

#### 4. Regular Meetings With the Neutral

The regular meetings shall be held at the Project Site. Each meeting shall consist of an informal round table discussion followed by a field observation of the work. The round table discussion shall be attended by selected personnel from the University and the Subcontractor. The Agenda shall generally include the following:

- a. Meeting convened by the Neutral.
- b. Opening Remarks by the University's representative.
- c. A description by the Subcontractor of:
  1. work accomplished since the last meeting,
  2. current status of the work schedule and schedule for future work,
  3. potential or anticipated problems and proposed solutions,
  4. current and potential disputes, claims, and other controversies.
- d. Discussion by the University's representative of:
  1. the work schedule as the University views it,
  2. potential disputes, claims, and other controversies,
  3. status of past disputes, claims, and other controversies.
- e. Such other items as the parties may wish to discuss with the Neutral.
- f. Set tentative date for next meeting(s).

The University shall prepare minutes of regular meetings and circulate them for comments, revisions and/or approval of all concerned. The field observations shall cover all active segments of the work. The Neutral shall be accompanied by representatives of both the University and Subcontractor.

### E. Procedure and Schedule for Dispute Resolution

Disputes shall be considered as quickly as possible, taking into consideration the particular circumstances and the time required to prepare appropriate documentation. Steps may be omitted, as agreed by both parties, and the time periods stated below may be shortened in order to hasten resolution.

1. By written Request for Review, either the University or Subcontractor may request that the Neutral review any disputes, claims, and other controversies in connection with, or arising out of performance of the work of this Subcontract, which the Parties have considered but have been unable to resolve.
2. Simultaneous with submittal to the Neutral, a copy of the Request for Review shall be provided to the other party. The Request for Review shall state clearly and in full detail the specific issues of the dispute to be considered by the Neutral.
3. When a dispute is submitted to the Neutral it may be heard at the next regular Neutral meeting or at a special meeting, as agreed by both Parties. For an urgent matter, the Neutral shall meet at its earliest convenience with both parties at a meeting scheduled by the Neutral.
4. During the hearing the Subcontractor and the University shall each have ample opportunity to be heard and to offer evidence. Detailed procedures are given in Paragraph F. The Neutral's recommendations for resolution of the dispute will be given in writing, to both the University and the Subcontractor, within five working days of completion of the hearings. In difficult or complex cases, and in consideration of the Neutral's schedule, this time may be extended by mutual agreement of all parties.
5. If requested by either party, the Neutral shall provide oral or written clarification of its recommendation.

#### F. Conduct of Hearing

##### 1. Prehearing Submittals

Written position statements shall be submitted to each Neutral member before the hearing begins. The Neutral may also request a presentation of factual documentation, prepared jointly by the parties.

##### 2. Location

Normally the hearing will be conducted at the Project Site. However, any location that would be more convenient and still provide all required facilities and access to necessary documentation is satisfactory. Private sessions of the Neutral may be held at any convenient location.

##### 3. Participants

The University and the Subcontractor shall have representatives at all hearings. The Party requesting Neutral review will first present its position, followed by the other party. Each party will then be allowed successive rebuttals until all aspects are fully covered. The Neutral members may ask questions, request clarification, or ask for additional data. In difficult or complex cases, additional hearings may be necessary in order to consider and fully understand all the evidence presented by both parties. Both the University and Subcontractor shall be provided full and adequate opportunity to present all of their evidence, documentation, and testimony regarding all issues before the Neutral.

Attendance by, or participation of lawyers will be allowed only by agreement of both parties.

##### 4. Neutral Deliberations

After the hearing is concluded, the Neutral shall meet to formulate its recommendations. All Neutral deliberations shall be conducted in private, with all individual views kept strictly confidential. The Neutral's recommendations, together with explanations of its reasoning, shall be submitted as a written report to both parties. The recommendations shall be based on the pertinent provisions of the Subcontract, applicable laws and regulations, and the facts and circumstances involved in the dispute. It is important for the Neutral to express, clearly and completely, the logic and reasoning leading to the recommendations, so that both parties fully understand it.

##### 5. Waiver

The procedures set forth in this section may be waived or modified with the concurrence of the Neutral and all parties.

#### G. Disposition

The parties shall comply with the decision of the Neutral with respect to subcontract work. If any party is dissatisfied with the decision, either may proceed in accordance with Clause entitled Disputes. The project work shall continue as per the decision of the Neutral, and such decision may not be changed or amended without both parties' consent. The disputes process must be invoked within ten working days of the Neutrals' decision. If the Disputes clause is not invoked within this period, all aspects of the Neutrals' decision become final and binding on all parties.

## **CLAUSE 16 – DISPUTES AND CLAIMS**

### **A. Submittal of Claim**

1. Any claim for an equitable adjustment not resolved in the ordinary course of business shall be referred in writing to the University Procurement Representative within 30 calendar days of the act, event, or order giving rise to the claim. The term "claim," as used in this clause, shall mean a written request for adjustment or interpretation of Subcontract terms, payment of compensation, extension of time, or other relief with respect to the terms of the Subcontract submitted by the Subcontractor to the University with adequate supporting data and including a demand for a decision by the University. The term "adequate supporting data," as used in this clause, shall mean a detailed statement of the basis and supporting reasons for the asserted entitlement and an itemized breakdown of any adjustment or compensation sought.
2. If the total amount of the compensation sought exceeds \$50,000, the Subcontractor shall certify, at the time of submission as the claim, as follows:

"I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief; and that the amount requested accurately reflects the Subcontract compensation for which the Subcontractor believes the University is liable.

(Subcontractor's Name)"

### **B. Decision of University**

1. The University shall review the facts pertinent to the claim and render a written decision. A copy of the decision shall be furnished to the Subcontractor by certified mail, return receipt requested, or any other method that provides evidence of receipt.
2. The University shall use its best efforts to issue a written decision on a claim within 30 days after receipt of the claim. If a decision is not issued within the stipulated period, the University shall notify the Subcontractor of the time within which the decision will be made. This time period shall depend on the size and complexity of the claim and the adequacy of the Subcontractor's supporting data and other relevant factors. If a decision is not issued on any claim within 90 days after the University's receipt of the claim, the claim shall be considered to have been denied.

### **C. Mediation**

1. The Decision of the University on any claim may be submitted to non-binding mediation administered by the American Arbitration Association under its Construction Industry Mediation Rules. Such mediation is mandatory before having recourse to arbitration or a judicial forum. Any demand for mediation must be filed in the appropriate format with the San Francisco Office of the American Arbitration Association (AAA), at 417 Montgomery Street, San Francisco, CA 94104-1113. A copy of the demand for mediation shall be furnished to the University.
2. By mutual agreement the parties may agree to submit to mediation under this clause at any time in the dispute process.
3. No mandatory demand for mediation on a dispute may be made unless the Subcontractor has submitted a claim to the University and until (a) the University has issued a written decision, or (b) 90 days after the date of the University's receipt of a claim, if a decision has not been issued by that date.
4. The demand shall (a) contain a statement setting forth the nature of the claim, a copy of the University's decision, a copy of this clause; and (b) identify this Subcontract by title and number, state the amount involved, if any, and the remedy sought. The demand shall be filed together with the appropriate filing fee.
5. Timely notice of an intention to mediate shall be a prerequisite to an effective election to mediate. Except as otherwise provided in this clause, the decision of the University shall be final and conclusive unless the Subcontractor delivers to the University a written notice of the intention to mediate, by certified mail, return receipt requested, or any other method that provides evidence of receipt, within:
  - a. 30 days from the date the Subcontractor receives the University's decision on a claim; or
  - b. 180 days after the date of the University's receipt of a claim, if a decision has not been issued by that date.
6. The results of any such mediation shall not be binding on either party.
7. This requirement to mediate disputes may be waived or modified only with the consent of all parties.
8. Unless the parties otherwise agree the locale for the mediation shall be the AAA offices in San Francisco.

### **D. Arbitration**

1. If the mediation in C. above is unsuccessful, or if all parties agree to waive mediation, the decision of the University on any claim may be arbitrated by the Subcontractor. Any demand for arbitration must be filed in the appropriate format with the San Francisco Office of the American Arbitration Association (AAA), at 417 Montgomery Street, San Francisco, CA 94104-1113. A copy of the demand for arbitration shall be furnished to the University.
2. The demand shall (a) contain a statement setting forth the nature of the claim, a copy of the University's decision, proof of mediation or waiver thereof, a copy of this clause; and (b) identify this Subcontract by title and number, state the amount involved, if any, and the remedy sought. The demand shall be filed together with the appropriate filing fee, as provided in the AAA Construction Industry Arbitration Rules.
3. Timely notice of an intention to arbitrate shall be a prerequisite to an effective election to arbitrate. Except as otherwise provided in this clause, the decision of the University shall be final and conclusive unless the Subcontractor delivers to the University a written notice of the intention to arbitrate, by certified mail, return receipt requested, or any other method that provides evidence of receipt, within:
  - a. 30 days from the date of the unsuccessful mediation; or
  - b. 30 days from the date all parties agree to waive or modify the mediation requirement.

E. Rules of Arbitration

1. Except as otherwise provided in this clause, arbitration shall be in accordance with the AAA Construction Industry Arbitration Rules in effect on the date the arbitration is initiated, as modified by this clause. The arbitration shall be de novo. The award rendered by the arbitrator(s) shall be final.
2. The following additional modifications are made to the AAA rules:
  - a. The arbitrator(s) shall be neutral and appointed by the AAA.
  - b. If the arbitration panel is composed of three arbitrators, one shall be an attorney. If a single arbitrator hears the claim, the single arbitrator need not be an attorney.
  - c. A claim involving less than \$50,000 shall be heard by a single arbitrator. A claim involving \$50,000 or more shall be heard by three arbitrators.
  - d. The parties shall have the discovery rights and follow the procedures provided in California Code Civil Procedure section 1283.05. The provisions of subparagraph (e) of section 1283.05 shall not be applicable to such discovery.
  - e. The arbitrator(s) may employ expert technical advisor(s) for claims of extraordinary technical complexity with the consent of the parties to this Subcontract. If the arbitrator(s) utilizes an expert technical advisor, such expert technical advisor shall only communicate with the arbitrator(s) on the merits of the claim in writing, with copies served on all parties, or orally on the record in the presence of or after due notice to the parties, except as otherwise consented to in writing by all parties. All evidence, opinions or other information which an expert technical advisor testifies to or furnishes shall be subject to cross-examination and pertinent objections. Either party may object for cause to the use of a particular individual as an expert technical advisor. If such objection is not timely made, it shall be deemed waived. The parties shall share the expense for such expert technical advisor(s) on a pro rata basis.
  - f. If more than one demand for arbitration is made by a party to this Subcontract with respect to concurrent claims referred to the University, all such concurrent claims shall be consolidated into a single arbitration hearing unless the parties to this Subcontract otherwise agree.
  - g. The Subcontractor's performance bond surety for the project, a Subcontractor or supplier to the Subcontractor, and the Architect may be permitted to join in and be bound by the arbitration if required by the terms of their respective contracts with the Subcontractor or the University. Such joinder shall not be required if it unduly delays or complicates the expeditious resolution of the claim unless a failure to order joinder would be likely to produce inconsistent decisions from separate proceedings among the Subcontractor and University. Any such joinder will be limited to issues raised by the Subcontractor and University directly concerning the claim.
  - h. Unless the parties otherwise agree the locale for the arbitration shall be the AAA offices in San Francisco.
  - i. The arbitrator(s) shall issue subpoenas for the attendance of witnesses and for the production of documents and other evidence in accordance with California Code of Civil Procedure Section 1282.6. Witnesses shall be entitled to receive fees and mileage as provided in California Code of Civil Procedure Section 1283.2.
  - j. The arbitrator(s) shall decide the claim in accordance with the applicable substantive law of California, except that clauses based upon federal regulations will be interpreted in accordance with applicable federal

decisions. An award, including an award of costs and fees, is beyond the power of the arbitrator(s) if the award is based on an error of law. The award shall include a determination of all the questions submitted to the arbitrator(s) the decision of which is necessary to determine the claim, and a summary of the evidence and the reasons, factual and legal, for the decision. The award shall be in writing and signed by either the sole arbitrator or by at least a majority if there be more than one. The arbitrator(s) shall have no authority to add to, subtract from, modify, change, alter or ignore in any way the provisions of this Subcontract or expressly written modification or supplemental agreement thereto, or to extend its duration, unless all the parties hereto have expressly agreed, in writing, to give the arbitrator(s) specific authority to do so.

- k. Each party to the arbitration shall pay its pro rata share of the arbitrator(s), together with other expenses of the arbitration incurred or approved by the arbitrator(s), not including counsel fees or witness fees or other expenses incurred by a party for its own benefit.

#### F. Litigation

1. The Subcontractor may elect to litigate the University's decision on, or denial of, a claim if the amount of the claim is \$100,000 or more. Such an election shall constitute an irrevocable waiver of the right to arbitrate.
2. No demand for litigation on a dispute may be made unless the Subcontractor has submitted a claim exceeding \$100,000 to the University and until (a) the University has issued a written decision; or (b) the 180 days after the date of the University's receipt of a claim exceeding \$100,000, if a decision has not been issued by that date.
3. Timely notice of an intention to litigate a claim shall be a prerequisite to an effective election to litigate. Except as otherwise provided in this clause, the decision of the University on a claim shall be final and conclusive unless the Subcontractor delivers to the University a written notice of the intention to litigate, by certified mail, return receipt requested, or any other method that provides evidence of receipt, within:
  - a. 90 days from the date the Subcontractor receives the University's decision on a claim; or
  - b. 240 days after the date of the University's receipt of a claim exceeding \$100,000, if a decision has not been issued by that date.
4. The parties hereby elect the Superior Court of the State of California for the County in which the Subcontract was to be performed as the exclusive forum for such litigation.
5. If the University's decision involves a claim of \$100,000 or more, and a party to this Subcontract has demanded arbitration, the other party to this Subcontract shall have 21 days from the date of its receipt of the notice of such filing from the AAA within which to file an answering statement of a notice of intention to litigate the decision in lieu of arbitrating it. If the other party does not deliver a written notice of intention to litigate within the 21 day period, by certified mail, return receipt requested, or any other method that provides evidence of receipt, that party shall be deemed to have consented to arbitration and to have irrevocably waived the right to litigate the University's decision. If no answering statement is filed within the 21 day period, it shall be considered as a denial of the claim.
6. Failure to properly file an action for litigation in the appropriate forum within 30 days following either party's notice of intention to litigate in paragraph 5. above, shall constitute a binding and irrevocable acceptance of the University's Decision.

#### G. Claims Excluded

The procedures and remedies provided in this clause shall not apply to:

1. any claim for or dispute about penalties or forfeitures prescribed by these GENERAL PROVISIONS or by statute or regulation which another State or Federal agency is specifically authorized to administer, settle or determine;
2. any claim for or respecting personal injury or death or reimbursement or other compensation arising out of or resulting from liability for personal injury or death;
3. any claim or dispute involving fraud and misrepresentation;
4. any claim or dispute relating to stop payment requests or stop notices or the procedures authorized by *LIENS AND CLAIMS FOR LABOR OR MATERIALS* clause;
5. any claim related to the approval, refusal to approve, or substitution of subcontractors, regardless of tier, and supplies; or
6. any claim based on or involving noncompliance with or violation of any applicable health, safety or environmental regulations, statutes or provision(s).

#### H. Continuance of Performance

Pending any University decision on a dispute or claim, mediation discussions, award by the arbitrator(s), or a final adjudication by the courts, the Subcontractor shall proceed diligently with the performance of this Subcontract and in accordance with the University's decision, and the University shall pay for such performance in accordance with the payment terms of this Subcontract, unless the parties to this Subcontract otherwise agree in writing.

#### **CLAUSE 17 – CLAUSES INCORPORATED BY REFERENCE**

The FAR and DEAR clauses listed below, which are located in Chapters 1 and 9, respectively, of Title 48 of the U.S. Code of Federal Regulations, are incorporated by this reference as a part of these GENERAL PROVISIONS with the same force and effect as if they were given in full text, as prescribed below. The full text of the clauses may be accessed electronically at <http://www.arnet.gov/far/> (FAR) or <http://www.pr.doe.gov/dear/dear.html> (DEAR).

As used in the clauses, the term "contract" shall mean the Subcontract; the term "Contractor" shall mean the entity (hereinafter "Subcontractor") who entered into the Subcontract with the University; the term "subcontractor" shall mean the Subcontractor's subcontractor; and the terms "Government" and "Contracting Officer" shall mean the University, except in FAR clauses 52.227-1, 52.227-2, 52.227-4, and 52.227-14, and DEAR clause 970.5204-9, in which clauses "Government" shall mean the U.S. Government and "Contracting Officer" shall mean the DOE Contracting Officer for Prime Contract W-7405-ENG-48 with the University. As used in DEAR clause 952.227-9, the term "DOE" shall mean DOE or the University.

The modifications of these clause terms are intended to appropriately identify the parties and establish their contractual and administrative reporting relationship, and shall not apply to the extent they would affect the U.S. Government's rights. The Subcontractor shall include the listed clauses in its subcontracts at any tier, to the extent applicable.

#### **APPLICABLE TO ALL SUBCONTRACTS:**

FAR 52.203-10	PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)
DEAR 952.203-70	WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000), if the Subcontract involves any work at a DOE owned or controlled facility
DEAR 970.5208-1	PRINTING (DEC 2000), if the Subcontract requires any printing
FAR 52.222-1	NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)
FAR 52.222-6	DAVIS-BACON ACT (FEB 1995)
FAR 52.222-7	WITHHOLDING OF FUNDS (FEB 1988)
FAR 52.222-8	PAYROLLS AND BASIC RECORDS (FEB 1988)
FAR 52.222-9	APPRENTICES AND TRAINEES (FEB 1988)
FAR 52.222-10	COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)
FAR 52.222-11	SUBCONTRACTS (LABOR STANDARDS) (FEB 1988)
FAR 52.222-12	CONTRACT TERMINATION - DEBARMENT (FEB 1988)
FAR 52.222-13	COMPLIANCE WITH DAVIS BACON AND RELATED ACT REGULATIONS (FEB 1988)
FAR 52.222-14	DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)
FAR 52.222-15	CERTIFICATION OF ELIGIBILITY (FEB 1988)
FAR 52.222-21	PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)
FAR 52.222-26	EQUAL OPPORTUNITY (FEB 1999)
FAR 52.225-9	BUY AMERICAN ACT-BALANCE OF PAYMENTS PROGRAM-CONSTRUCTION MATERIALS (FEB 2000)
FAR 52.227-1	AUTHORIZATION AND CONSENT (JULY 1995)
DEAR 952.227-9	REFUND OF ROYALTIES (FEB 1995)
FAR 52.227-14	RIGHTS IN DATA-GENERAL (JUNE 1987), with Alternates II, III, & V and Paragraphs (a) & (d)(3) per DEAR 927.409 (DEC 2000) (See also the <i>LIMITED RIGHTS DATA DISCLOSURE PURPOSES</i> clause, below)
FAR 52.227-16	ADDITIONAL DATA REQUIREMENTS (JUNE 1987)
FAR 52.229-3	FEDERAL, STATE, AND LOCAL TAXES (JAN 1991)
FAR 52.236-2	DIFFERING SITE CONDITIONS (APR 1984)

FAR 52.236-3	SITE INVESTIGATIONS AND CONDITIONS AFFECTING THE WORK (APR 1984)
FAR 52.236-5	MATERIALS AND WORKMANSHIP (APR 1984)
FAR 52.236-6	SUPERINTENDENCE BY THE SUBCONTRACTOR (APR 1984)
FAR 52.236-8	OTHER CONTRACTS (APR 1984)
FAR 52.236-9	PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS (APR 1984)
FAR 52.236-10	OPERATIONS AND STORAGE AREAS (APR 1984)
FAR 52.236-11	USE AND POSSESSION PRIOR TO COMPLETION (APR 1984)
FAR 52.236-12	CLEANING UP (APR 1984)
FAR 52.236-13	ACCIDENT PREVENTION (Nov 1991), with Alternate I
FAR 52.236-15	SCHEDULES FOR CONSTRUCTION CONTRACTS (APR 1984)
FAR 52.236-17	LAYOUT OF WORK (APR 1984)
FAR 52.236-21	SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (FEB 1997)
FAR 52.242-14	SUSPENSION OF WORK (APR 1984)
FAR 52.243-4	CHANGES (AUG 1987)
FAR 52.244-6	SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (OCT 1998)
FAR 52.245-2	GOVERNMENT PROPERTY (FIXED PRICE CONTRACTS) (DEC 1989), as modified by DEAR 952.245-2, if any U.S. Government Property is furnished by the University
FAR 52.246-12	INSPECTION OF CONSTRUCTION (AUG 1996)
FAR 52.246-21	WARRANTY OF CONSTRUCTION (MAR 1994), with Alternate I
FAR 52.249-2	TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (SEP 1996), with Alternate I

**APPLICABLE IF THE SUBCONTRACT EXCEEDS \$2,500:**

FAR 52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JULY 2000)
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**APPLICABLE IF THE SUBCONTRACT IS FOR \$10,000 OR MORE:**

FAR 52.222-27	AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (FEB 1999)
FAR 52.222-35	AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1998)
FAR 52.222-36	AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)
FAR 52.222-37	EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (JAN 1999)

**APPLICABLE IF THE SUBCONTRACT EXCEEDS \$25,000:**

DEAR 970.5223-4	WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2000), if the Subcontract involves any of the hazardous activities stipulated in 10 CFR 707.2
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**APPLICABLE IF THE SUBCONTRACT EXCEEDS \$100,000:**

FAR 52.203-6	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)
FAR 52.203-7	ANTI-KICKBACK PROCEDURES (JUL 1995), excluding Paragraph (c)(1)
FAR 52.203-12	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 1997)
FAR 52.219-8	UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2000)
FAR 52.222-4	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION (SEP 2000)
FAR 52.227-2	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996)

FAR 52.227-4	PATENT INDEMNITY-CONSTRUCTION CONTRACTS (APR 1984)
DEAR 970.5232-3	ACCOUNTS, RECORDS, AND INSPECTION (DEC 2000), if costs are a factor in determining the amount payable to the Subcontractor; excluding Paragraph (h)
FAR 52.244-2	SUBCONTRACTS (AUG 1998), with Alternate II. Paragraph (e) insert is: "Any subcontract or purchase order for other than "commercial items" exceeding \$100,000"
FAR 52.247-63	PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JAN 1997), if the Subcontract involves international air transportation
FAR 52.247-64	PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (JUNE 2000), if the Subcontract involves ocean transportation of supplies other than "commercial items"
FAR 52.249-10	DEFAULT (FIXED-PRICE CONSTRUCTION) (APR 1984)

**APPLICABLE IF THE SUBCONTRACT EXCEEDS \$500,000:**

FAR 52.214-27	PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA-MODIFICATIONS -SEALED BIDDING (OCT 1997), if the Subcontract results from a sealed bid
FAR 52.214-28	SUBCONTRACTOR COST OR PRICING DATA-MODIFICATIONS-SEALED BIDDING (OCT 1997), if the Subcontract results from a sealed bid
FAR 52.215-10	PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (OCT 1997), if the Subcontract does not result from a sealed bid
FAR 52.215-11	PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA-MODIFICATIONS (OCT 1997), if the Subcontract does not result from a sealed bid
FAR 52.215-12	SUBCONTRACTOR COST OR PRICING DATA (OCT 1997), if the Subcontract does not result from a sealed bid
FAR 52.215-13	SUBCONTRACTOR COST OR PRICING DATA-MODIFICATIONS (OCT 1997), if the Subcontract does not result from a sealed bid
DEAR 970.5226-2	WORKFORCE RESTRUCTURING UNDER SECTION 3161 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1993 (DEC 2000)
DEAR 952.226-74	DISPLACED EMPLOYEE HIRING PRACTICES (JUN 1997), if the Subcontract is not for "commercial items"

**APPLICABLE IF THE SUBCONTRACT EXCEEDS \$1,000,000:**

FAR 52.219-9	SMALL BUSINESS SUBCONTRACTING PLAN (OCT 2000), unless the Subcontractor is a small business or there are no subcontracting possibilities. With Alternate 1 (OCT 1995) if the Subcontract resulted from a sealed bid proposal
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**APPLICABLE IF THE SUBCONTRACT INVOLVES CLASSIFIED INFORMATION OR UNRESTRICTED ACCESS TO "LIMITED" OR "EXCLUSION" SECURITY AREAS:**

DEAR 952.204-2	SECURITY (SEP 1997)
DEAR 952.204-70	CLASSIFICATION / DECLASSIFICATION (SEP 1997)
DEAR 952.204-74	FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE OVER CONTRACTOR (DEVIATION), per DOE Acquisition Letter 99-03
DEAR 970.5204-1	COUNTERINTELLIGENCE (DEC 2000)
DEAR 970.5223-4	WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2000), If the Subcontract exceeds \$25,000

**CLAUSE 18 - LIMITED RIGHTS DATA DISCLOSURE PURPOSES**

The following purposes for disclosure shall apply to, and shall be inserted in any Limited Rights Notice on, any Limited Rights Data furnished or delivered by the Subcontractor or a lower-tier subcontractor pursuant to Sub-paragraph (g)(2) of the *RIGHT IN DATA – GENERAL* clause of these GENERAL PROVISIONS:

- A. This "Limited Rights Data" may be disclosed for evaluation purposes under the restriction that the "Limited Rights Data" be retained in confidence and not be further disclosed;



- B. This "Limited Rights Data" may be disclosed to other contractors participating in the Government's program of which this Subcontract is a part for information or use in connection with the work performed under their contracts and under the restriction that the "Limited Rights Data" be retained in confidence and not be further disclosed; and
- C. This "Limited Rights Data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "Limited Rights Data" be retained in confidence and not be further disclosed.

#### **CLAUSE 19 - GOVERNING LAW AND VENUE**

This Subcontract shall be interpreted in accordance with the substantive and procedural laws of the State of California. Any action at law or judicial proceeding instituted by either party pertaining to the Subcontract shall be instituted in the State of California in the Superior Court of Alameda County (or in the Superior Court of San Joaquin County if the underlying action occurred at LLNL's Site 300).

#### **CLAUSE 20 - ORDER OF PRECEDENCE**

Any inconsistencies in the documents comprising the Subcontract shall be resolved by giving precedence in the following order: (a) the Subcontract document; (b) these GENERAL PROVISIONS; (c) other referenced documents, exhibits, and attachments; and (d) any referenced specification or statement of work.

(END OF GENERAL PROVISIONS)